IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 37127 of 2003(T)

PETITIONER:

MANUAL MATHEW, SENIOR CLERK,
THE KALLOORKKAD FARMERS CO-OPERATIVE
BANK LIMITED NO.2605, KALLOORKKAD P.O.,
MOOVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), ERNAKULAM.**

3. **THE KALLOORKKAD FARMERS CO-OPERATIVE BANK LIMITED, REPRESENTED BY ITS MANAGING DIRECTOR KALOORKKAD P.O., MUVATTUPUZHA, ERNAKULAM.**

4. **LUCY JOSE, SENIOR CLERK, THE KALLOORKKAD FARMERS CO-OPERATIVE BANK LIMITED, KALOORKKAD P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT.**

5. **SANTHAMMA P.K., SENIOR CLERK, THE KALLOORKKAD FARMERS CO-OPERATIVE BANK LIMITED, KALOORKKAD P.O.,MUVATTUPUZHA, ERNAKULAM DISTRICT.**

W.P.(C). NO.37127/2003:

6. PHILIMINA K.M.,SENIOR CLERK,
THE KALLOORKKAD FARMERS CO-OPERATIVE BANK LIMITED,
KALOORKKAD P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT.

7. V.P.THRESSIA, SENIOR CLERK,
THE KALLOORKKAD FARMERS CO-OPERATIVE
BANK LIMITED, KALOORKKAD P.O., MUVATTUPUZHA,
ERNAKULAM DISTRICT.

8. JAINAMMA MATHEW, SENIOR CLERK,
THE KALLOORKKAD FARMERS CO-OPERATIVE
BANK LIMITED, KALOORKKAD P.O.,
MUVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.PAULSON THOMAS,
SR. GOVT. PLEADER SRI. P.K. RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007, ALONG WITH W.P.(C). NO. 21226 OF 2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO. 37127/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPOINTMENT ORDER DTD. 14/12/1981.

EXT.P.2: COPY OF THE RANK LIST PREPARED AND PUBLISHED BY THE BANK DTD. 12/12/81.

EXT.P.3: COPY OF THE APPROVED FEEDER CATEGORY RULES DTD. 24/12/1980.

EXT.P.4: COPY OF THE PROCEEDINGS NO. 13/81-82 DTD. 24/05/1982.

EXT.P.5: COPY OF THE PROVISIONAL SENIORITY LIST DTD. 10/01/1986.

EXT.P.6: COPY OF THE PETITION FILED BEFORE THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G) DTD.2 1/03/2001.

EXT.P.7: COPY OF THE JUDGMENT IN W.A. NO. 1728/2001 DTD. 03/12/2002.

EXT.P.8: COPY OF THE ORDER NO. C.R.P. 2/1816/01 DTD. 06/05/2003.

EXT.P.9: COPY OF THE ADDITIONAL STATEMENT FILED BEFORE THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, ERNAKULAM DTD. 22/01/2003.

EXT.P.10: COPY OF THE APPEAL FILED BEFORE THE GOVERNMENT DTD. 04/06/2003.

EXT.P.11: COPY OF THE ORDER NO. G.O. (RT) 487/2003/CO-OP. DTD. 28/08/2003.

RESPONDENT'S EXHIBITS:

EXT.R.3.A: COPY OF THE PROCEEDINGS NO. 14/81-82 DTD. 24/05/1982 OF THE PRESIDENT OF THE BANK.

EXT.R3.B: COPY OF THE PROCEEDINGS NO. 15/81-82 DTD. 2/05/1982 OF THE PRESIDENT OF THE BANK.

EXT.R3.C: COPY OF THE PROCEEDINGS NO. 12/82-83 DD. 20/11/1982 OF THE PRESIDENT OF THE BANK.

EXT.R3.D: COPY OF THE FINAL SENIORITY LIST DTD. 22/02/1986.

EXT.R4.A: COPY OF THE NOTIFICATION DTD. 25/05/81.

W.P.(C). NO.37127/2003:

EXT.R4.B: COPY OF THE PROCEEDINGS OF THE R.3. BANK APPOINTING THE PETITIONER AS STORE JUNIOR CLERK DTD. 19/07/82.

EXT.R4.C: COPIES OF THE RELEVANT PAGES OF THE SERVICE BOOK OF THE PETITIONER AND RESPONDENTS 4 TO 8.

//TRUE COPY//

prv.

S. SIRI JAGAN, J.

W.P.(C)NO. 37127/03
&W.P.(C)NO.21226 OF 2006

DATED THIS THE 21st DAY OF MARCH, 2007

JUDGMENT

W.P(C)No.37127 of 2003

The subject matter of this writ petition is a dispute relating to inter-se seniority between himself and respondents 4 to 8 which dispute has been adjudicated by the Joint Registrar of Co-operative Societies, Ernakulam by Ext.P8 order and held against the petitioner which was confirmed in appeal by the Government by Ext.P11 order. The facts which are necessary for disposal of this writ petition are as under.

2. The 3rd respondent Bank conducted a selection for appointment to the post of Store Junior Clerk in the Bank and after the selection Ext.P2 rank list was published on 12.12.81, in which the petitioner was the 1st rank holder, pursuant to which Ext.P1 appointment order dated 14.12.81 was issued to the petitioner. The petitioner would submit that Ext.P5 provisional seniority list was published by the 3rd respondent – Bank, to which the petitioner has filed objections. However, the said objections have not been

considered and the final seniority list has not been published submits the petitioner. In the above circumstances, the petitioner filed Ext.P6 petition before the Joint Registrar of Co-operative Societies and approached this Court for a direction to the Joint Registrar to dispose of Ext.P6. A learned Single Judge of this Court directed the Joint Registrar to consider the representation and pass appropriate orders. In W.A.No.1728/01 filed by the 3rd respondent – Bank, a Division Bench, while confirming the judgment of the learned Single Judge directed that while considering Ext.P6 representation all possible objections including that of delay in approaching the authority should also be considered uninfluenced by the observations of the learned Single Judge. It is pursuant to the said judgment that Ext.P8 order has been passed. In Ext.P8 order, the petitioner's contention has been rejected on two grounds. First is that going by the appointment order- Ext.P1 itself issued to the petitioner, it has been specifically stated that canvassing of one year fixed deposits of not less than 2 lakhs of rupees during the period of training will be considered as an essential qualification for appointment in regular service. Subsequently, respondents 4 to 8 were regularised as Store Junior Clerk ahead of the petitioner and that is why the petitioner has been shown as juniors to respondents 4 to 8. It has been further held that on 28.12.85, a provisional seniority list has been published inviting objections to the same and the petitioner had never submitted any

objections to the same. Therefore, the Joint Registrar found that it should be presumed that the petitioner had already accepted the seniority list. In respect of the second ground regarding delay also, the Joint Registrar found that the petitioner has raised this dispute after having been promoted as Store Senior Clerk, Bank Junior Clerk and Senior Clerk in which posts also respondents 4 to 8 were promoted ahead of the petitioner which was accepted by him without demur and therefore he cannot rake up the question of seniority after 15 long years. On the above reasoning the claim of the petitioner was rejected by Ext.P8 order. The petitioner's appeal, Ext.P10, was dismissed by the Government by Ext.P11 order upholding the orders of the Joint Registrar. The petitioner is now challenging Exts.P8 and P11 orders.

3. The contentions of the petitioner is that admittedly by Ext.P1 order, the petitioner has been included as the 1st rank holder in the rank list published for the post of Store Junior Clerk. Pursuant to the same he was appointed first as per Ext.P1. Therefore, the petitioner should be put as senior to respondents 4 to 8. Respondents 4 to 8 who were placed below the petitioner in rank as per Ext.P2 rank list. Hence for all purposes, the petitioner should be regarded as senior to respondents 4 to 8. He would further submit that he has filed objections to Ext.P5 provisional seniority list and that no final seniority list has been published, nor has he been

intimated about the out come of his objections in respect of the provisional seniority list. He would submit that, that being so, he cannot be accused of being late in challenging the seniority given to the respondents 4 to 8, in Ext.P5 provisional seniority list on merits. He would contend that it is settled law that the seniority in a cadre has to be fixed based on the date of first appointment and not on the date of regularisation. He would further submit that since the petitioner has not been given any other appointment order other than 14.12.81, the question of further regulartisation of service is not contemplated and therefore his seniority has to be reckoned with effect from the date of Ext.P1 namely 14.12.81 and his position in Ext.P2 rank list. On these grounds, the petitioner submits that Exts.P8 and P11 orders are liable to be quashed and the 3rd respondent is liable to be directed to revise the petitioner's seniority vis-a-vis respondents 4 to 8 and review all promotions given to them accordingly.

4. In answer to the same, the 3rd respondent – bank as well as respondents 4 to 8 have filed counter affidavits. Their contention is that Ext.P2 appointment is subject to successful completed of training for which canvasing of deposits stipulated therein is a condition. Since respondent 4 to 8 had complied with that condition earlier to the petitioner, they were regularised ahead of the petitioner, consequent to which only they were given seniority over

the petitioner. In the counter affidavit submitted by the 3rd respondent – Bank, they categorically deny having received any objections from the petitioner against Ext.P5 provisional seniority list. They would also contend that the petitioner's contention that no final seniority list has been published is not correct. According to them, the final seniority list has been drawn up by the managing committee of the Bank in its meeting held on 22.12.1986 and the said resolution has been published in the notice Board. Further since no mode of publication of seniority list is prescribed anywhere in the Co-operative Societies Act, Rules or in the bye-laws of the Society, the publication of the final seniority list in the notice board would be sufficient publication as required under law. They would also submit that since Ext.R3(d) seniority list has been published as early as on 22.2.1986, the challenge regarding the seniority raised by the petitioner after 15 long years cannot be now countenanced. The 3rd respondent as well as respondents 4 to 8 would therefore seek dismissal of the writ petition on the above grounds.

5. I have considered the rival contentions in detail. Since I am impressed by the contention of respondents 3 to 8 regarding the delay in the matter of challenging the seniority, I am not inclined to go into the merits of the claim of the petitioner at this point of time. Although the petitioner would contend that he had filed objections to Ext.P5 provisional seniority list, he was unable to satisfy me about

the bonafides of the same by atleast producing a copy of the objections. Although the petitioner would contest the claim of the 3rd respondent that Ext.R3(d) final seniority list has actually not been published, I am not impressed with that contention also. Of course, the petitioner would try to discredit Ext.R3(d) by showing that in Ext.P5 there is an endorsement to the effect that the copy of the same has been sent to all the employees and staff Association. The same is conspicuously absent in Ext.R3(d) which would show that Ext..R3(d) is a concocted document and therefore non-est in law. I am not inclined to draw such an inference simply because of the absence of the such endorsement in Ext.R3(d). The petitioner has no case that the managing Committee of the bank had not passed resolution on 22.2.86. Atleast he has not made any attempt to show otherwise. When the Bank itself filed a counter affidavit categorically stating that Ext.R3(d) has been published in the notice board, I have no reason to disbelieve the same, unless the petitioner with some cogent material proves before me otherwise, which the petitioner has sadly fail to do. The petitioner has no allegation of malafides also.

6. In any event, the petitioner does not dispute the fact that the petitioner as well as respondents 4 to 8 have been promoted as Store Senior Clerk, Bank Junior Clerk and Senior Clerk in accordance with the seniority now published as per Ext.R3(d) which promotions were not challenged by the petitioner. The petitioner contends that

the final seniority list was never published at all and since the promotions were only based on the provisional seniority list, the same continues to be provisional and therefore he had no reason to challenge the same. It is very difficulty to accept that contention of the petitioner. Even according to the petitioner, Ext.P5 was published on 10.1.1986 assuming that he had infact filed objections to Ext.P5 he cannot be heard to contend that he waited for 15 long years to raise his dispute regarding seniority even if the final seniority list has not been drawn up as contended by the petitioner. After allowing the matter to drift for 15 years without any tangible challenge regarding seniority, the petitioner cannot now say that he was keeping silent only because the final seniority list has not been published. If the final seniority list has not been published and the Bank went on promoting respondents 4 to 8 ahead of the petitioner to several posts over a period of 15 years, he should have atleast filed a representation before the Bank against such repeated illegal promotion ahead of the petitioner. The petitioner has not produced any scrap of paper to the effect that he had in fact raised such a contention. There is a yawning gap of 15 years between Ext.P5 provisional seniority list and his first challenge against seniority given to respondents 4 to 8. The least he could have done in such circumstances was to get the appropriate authority to direct the Bank to publish the final seniority list before making promotions that too

several promotions.

7. In the above circumstances, I am satisfied that the petitioner is guilty of unexplained delay and latches in challenging the seniority given to respondents 2 to 8 ahead of the petitioner, since I am accepting the contention of delay and latches and not going into other contentions raised by the petitioner.

Accordingly, the writ petition is dismissed.

W.P.(C)NO.21226 OF 2006.

The 4th respondent in W.P.(C)No.37127/03 and another similarly situated employee are the petitioners in this writ petition, which appears to be a sequel to W.P.(c)No.37127/03. Apparently, in view of the pendency of the said writ petition, the petitioners have been denied further promotion. Now that I have dismissed W.P.(c) No.37127/03, it goes without saying that all promotions and other benefits of employees of the 2nd respondent Society has to be regulated in accordance with Ext.R3(d) final seniority list produced along with the counter affidavit of the Society in W.P.(c)No. 37127/03. Needless to say, the Society would take all appropriate actions in that regard without any further delay.

This writ petition is disposed of accordingly.

S. SIRI JAGAN, JUDGE

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